

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D27730
C/hu

_____AD3d_____

Argued - May 4, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
HOWARD MILLER
LEONARD B. AUSTIN, JJ.

2009-04748

DECISION & ORDER

Alan K. Hirschhorn, respondent, v Barbara Hirschhorn,
appellant.

(Index No. 200306/07)

Kantor, Davidoff, Wolfe, Mandelker, Twomey & Gallanty, P.C., New York, N.Y.
(Steven W. Wolfe, Gary Hoppe, Lawrence A. Mandelker, and Daniel M. Hirsch of
counsel), for appellant.

Jaspan Schlesinger LLP, Garden City, N.Y. (Lisa M. Golden of counsel), for
respondent.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by her
brief, from so much of a judgment of the Supreme Court, Nassau County (Brown, J.), entered March
25, 2009, as, upon a decision of the same court dated October 28, 2008, made after a nonjury trial,
in effect, dismissed her counterclaim.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

In reviewing a determination made after a nonjury trial, the power of this Court is as
broad as that of the trial court, and the Appellate Division may render the judgment it finds warranted
by the facts, bearing in mind that in a close case, the trial judge had the advantage of seeing the
witnesses (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492,
499; *Powers v Wilson*, 56 AD3d 639, 640-641; *Rosenberg v Rosenberg*, 44 AD3d 1022, 1024). We
find no basis in the record to disturb the Supreme Court's determination that the plaintiff was not
equitably estopped from enforcing a provision of the parties' separation agreement which precluded
recovery by the defendant on the counterclaim.

June 8, 2010

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The defendant's remaining contentions are either without merit or not properly before this Court.

RIVERA, J.P., FLORIO, MILLER and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, prominent initial "J".

James Edward Pelzer
Clerk of the Court